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HOUSE BILL 990

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO TAXATION; PROVIDING FOR THE SALE, EXCHANGE OR
TRANSFER OF THE INCOME TAX CREDIT AND THE CORPORATE INCOME TAX
CREDIT THAT MAY BE CLAIMED FOR CERTAIN CONVEYANCES OF REAL
PROPERTY; INCREASING THE AMOUNT OF THE CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-18.10 NMSA 1978 (being Laws 2003,
Chapter 331, Section 7) is amended to read:

"7-2-18.10. TAX CREDIT [~~AVAILABLE~~]--CERTAIN CONVEYANCES
OF REAL PROPERTY.--

A. There shall be allowed as a credit against the
tax liability imposed by the Income Tax Act, an amount equal to
fifty percent of the fair market value of land or interest in
land that is conveyed for the purpose of open space, natural
resource or biodiversity conservation, agricultural

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1 preservation or watershed or historic preservation as an
2 unconditional donation in perpetuity by the landowner or
3 taxpayer to a public or private conservation agency eligible to
4 hold the land and interests therein for conservation or
5 preservation purposes. The fair market value of qualified
6 donations made pursuant to this section shall be substantiated
7 by a "qualified appraisal" prepared by a "qualified appraiser",
8 as those terms are defined under applicable federal laws and
9 regulations governing charitable contributions.

10 B. The amount of the credit that may be claimed by
11 a taxpayer shall not exceed [~~one hundred thousand dollars~~
12 ~~(\$100,000)~~] two hundred fifty thousand dollars (\$250,000). In
13 addition, in a taxable year the credit used may not exceed the
14 amount of individual income tax otherwise due. A portion of
15 the credit that is unused in a taxable year may be carried over
16 for a maximum of [~~twenty~~] five consecutive taxable years
17 following the taxable year in which the credit originated until
18 fully expended; provided, however, that a credit claimed prior
19 to January 1, 2007 may be carried over for a maximum of twenty
20 consecutive taxable years. A taxpayer may claim only one tax
21 credit per taxable year.

22 C. Qualified donations shall include the conveyance
23 in perpetuity of a fee interest in real property or a
24 less-than-fee interest in real property, such as a conservation
25 restriction, preservation restriction, agricultural

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1 preservation restriction or watershed preservation restriction,
2 pursuant to the Land Use Easement Act and provided that the
3 less-than-fee interest qualifies as a charitable contribution
4 deduction under Section 170(h) of the Internal Revenue Code.
5 Dedications of land for open space for the purpose of
6 fulfilling density requirements to obtain subdivision or
7 building permits shall not be considered as qualified donations
8 pursuant to the Land Conservation Incentives Act.

9 D. Qualified donations shall be eligible for the
10 tax credit if the donations are made to the state of New
11 Mexico, a political subdivision thereof or a charitable
12 organization described in Section 501(c)(3) of the Internal
13 Revenue Code and that meets the requirements of Section
14 170(h)(3) of that code.

15 E. To be eligible for treatment as qualified
16 donations under this section, land or interests in lands must
17 be certified by the secretary of energy, minerals and natural
18 resources as fulfilling the purposes as set forth in Section
19 [~~2 of the Land Conservation Incentives Act~~] 75-9-2 NMSA 1978.
20 The use and protection of the lands, or interests therein, for
21 open space, natural area protection, biodiversity habitat
22 conservation, land preservation, agricultural preservation,
23 historic preservation or similar use or purpose of the property
24 shall be assured in perpetuity.

25 F. A taxpayer may apply for certification of

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1 eligibility for the tax credit provided by this section from
2 the energy, minerals and natural resources department. If the
3 energy, minerals and natural resources department determines
4 that the application meets the requirements of this section, it
5 shall issue a certificate of eligibility to the taxpayer, which
6 shall include a calculation of the maximum amount of tax credit
7 for which the taxpayer would be eligible. The energy, minerals
8 and natural resources department may issue rules governing the
9 procedure for administering the provisions of this subsection.

10 G. To receive a credit pursuant to this section, a
11 person shall apply to the taxation and revenue department on
12 forms and in the manner prescribed by the department. The
13 application shall include a certificate of eligibility issued
14 by the energy, minerals and natural resources department
15 pursuant to Subsection F of this section. If all of the
16 requirements of this section have been complied with, the
17 taxation and revenue department shall issue to the applicant a
18 document granting the tax credit. The document shall be
19 numbered for identification and declare its date of issuance
20 and the amount of the tax credit allowed for the qualified
21 donation made pursuant to this section.

22 H. Beginning January 1, 2008, the tax credit
23 represented by a document issued on or after January 1, 2007,
24 pursuant to Subsection G of this section, or an increment of
25 that tax credit, may be sold, exchanged or otherwise

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1 transferred, and may be carried forward for a period of five
2 taxable years following the taxable year in which the credit
3 originated until fully expended. A tax credit or increment of
4 a tax credit may only be transferred once. The credit may be
5 transferred to any taxpayer. A taxpayer to whom a credit has
6 been transferred may use the credit for the taxable year in
7 which the transfer occurred and unused amounts may be carried
8 forward to succeeding taxable years, but in no event may the
9 transferred credit be used more than five years after it was
10 originally issued.

11 I. A tax credit issued pursuant to this section
12 shall be transferred through a qualified intermediary. The
13 qualified intermediary shall, by means of a sworn notarized
14 statement, notify the taxation and revenue department of the
15 transfer and of the date of the transfer within ten days of the
16 transfer. Credits shall only be transferred in increments of
17 ten thousand dollars (\$10,000). The qualified intermediary
18 shall keep an account of the credits and have the authority to
19 issue sub-numbers registered with the taxation and revenue
20 department and traceable to the original credit.

21 J. If a charitable deduction is claimed on the
22 taxpayer's federal income tax for any contribution for which
23 the credit provided by this section is claimed, the taxpayer's
24 itemized deductions for New Mexico income tax shall be reduced
25 by the amount of the deduction for the contribution in order to

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1 determine the New Mexico taxable income of the taxpayer.

2 K. For the purposes of this section:

3 (1) "qualified intermediary" does not include
4 a person who has been previously convicted of a felony, who has
5 had a professional license revoked, who is engaged in the
6 practice defined in Section 61-28B-3 NMSA 1978 and who is
7 identified in Section 61-29-2 NMSA 1978, and does not include
8 any entity owned wholly or in part or employing any of the
9 foregoing persons; and

10 (2) "taxpayer" means a citizen or resident of
11 the United States, a domestic partnership, a limited liability
12 company, a domestic corporation, an estate, including a foreign
13 estate, or a trust."

14 Section 2. Section 7-2A-8.9 NMSA 1978 (being Laws 2003,
15 Chapter 331, Section 8) is amended to read:

16 "7-2A-8.9. TAX CREDIT [~~AVAILABLE~~]--CERTAIN CONVEYANCES OF
17 REAL PROPERTY.--

18 A. There shall be allowed as a credit against the
19 tax liability imposed by the Corporate Income and Franchise Tax
20 Act an amount equal to fifty percent of the fair market value
21 of land or interest in land that is conveyed for the purpose of
22 open space, natural resource or biodiversity conservation,
23 agricultural preservation or watershed or historic preservation
24 as an unconditional donation in perpetuity by the landowner or
25 taxpayer to a public or private conservation agency eligible to

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1 hold the land and interests therein for conservation or
2 preservation purposes. The fair market value of qualified
3 donations made pursuant to this section shall be substantiated
4 by a "qualified appraisal" prepared by a "qualified appraiser",
5 as those terms are defined under applicable federal laws and
6 regulations governing charitable contributions.

7 B. The amount of the credit that may be claimed by
8 a taxpayer shall not exceed [~~one hundred thousand dollars~~
9 ~~(\$100,000)~~] two hundred fifty thousand dollars (\$250,000). In
10 addition, in a taxable year the credit used may not exceed the
11 amount of corporate income tax otherwise due. A portion of the
12 credit that is unused in a taxable year may be carried over for
13 a maximum of [~~twenty~~] five consecutive taxable years following
14 the taxable year in which the credit originated until fully
15 expended; provided, however, that a credit claimed prior to
16 January 1, 2007 may be carried over for a maximum of twenty
17 consecutive taxable years. A taxpayer may claim only one tax
18 credit per taxable year.

19 C. Qualified donations shall include the conveyance
20 in perpetuity of a fee interest in real property or a
21 less-than-fee interest in real property, such as a conservation
22 restriction, preservation restriction, agricultural
23 preservation restriction or watershed preservation restriction,
24 pursuant to the Land Use Easement Act; provided that the
25 less-than-fee interest qualifies as a charitable contribution

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2 Dedications of land for open space for the purpose of
3 fulfilling density requirements to obtain subdivision or
4 building permits shall not be considered as qualified donations
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6 D. Qualified donations shall be eligible for the
7 tax credit if the donations are made to the state of New
8 Mexico, a political subdivision thereof or a charitable
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10 Revenue Code and that meets the requirements of Section
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12 E. To be eligible for treatment as qualified
13 donations under this section, land or interests in lands must
14 be certified by the secretary of energy, minerals and natural
15 resources as fulfilling the purposes as set forth in Section
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17 The use and protection of the lands, or interests therein, for
18 open space, natural area protection, biodiversity habitat
19 conservation, land preservation, agricultural preservation,
20 historic preservation or similar use or purpose of the property
21 shall be assured in perpetuity.

22 F. A taxpayer may apply for certification of
23 eligibility for the tax credit provided by this section from
24 the energy, minerals and natural resources department. If the
25 energy, minerals and natural resources department determines

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1 that the application meets the requirements of this section, it
2 shall issue a certificate of eligibility to the taxpayer, which
3 shall include a calculation of the maximum amount of tax credit
4 for which the taxpayer would be eligible. The energy, minerals
5 and natural resources department may issue rules governing the
6 procedure for administering the provisions of this subsection.

7 G. To receive a credit pursuant to this section, a
8 person shall apply to the taxation and revenue department on
9 forms and in the manner prescribed by the department. The
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15 document granting the tax credit. The document shall be
16 numbered for identification and declare its date of issuance
17 and the amount of the tax credit allowed for the qualified
18 donation made pursuant to this section.

19 H. Beginning January 1, 2008, the tax credit
20 represented by a document issued on or after January 1, 2007,
21 pursuant to Subsection G of this section, or an increment of
22 that tax credit, may be sold, exchanged or otherwise
23 transferred, and may be carried forward for a period of five
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25 originated until fully expended. A tax credit or increment of

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18 J. If a charitable deduction is claimed on the
19 taxpayer's federal income tax for any contribution for which
20 the credit provided by this section is claimed, the taxpayer's
21 itemized deductions for New Mexico income tax shall be reduced
22 by the amount of the deduction for the contribution in order to
23 determine the New Mexico taxable income of the taxpayer.

24 K. For the purposes of this section:

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4 identified in Section 61-29-2 NMSA 1978, and does not include
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6 foregoing persons; and

7 (2) "taxpayer" means a citizen or resident of
8 the United States, a domestic partnership, a limited liability
9 company, a domestic corporation, an estate, including a foreign
10 estate, or a trust."